IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.175 OF 1995

Govind Madhusudan Lekhak]
Aged 18 years, Hindu,]
Residing at Pyari Yadav Chawl]
R.No.12, Village Road,]
Bhandup, Bombay-400078]
Now lodged at Thana Central]
Prison.]..Appellant
(Ori.Accused no.2)

Vs.

The State of Maharashtra]
At the instant Bhandup]
Police Station]...Respondent
(Ori.Complainant)

....

Ms.Nilofar Saiyad i/b H.E.Mooman, Advocate for the Appellant
Mr.A.S.Shitole, A.P.P. for the State.

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPTEMBER 13,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant-original accused no.2 challenges the judgment and order dated 15th March, 1995 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No. 936 of 1991. By the said judgment and order, the learned Judge convicted the appellant for the

offence under Section 399 of IPC and sentenced him to R.I. for three years and to pay a fine of Rs.1,000/- in default of payment of fine, R.I. for six months.

. It may be stated here that the appellant-accused was facing trial along with six other accused persons. Out of them, accused nos. 5 and 6 were found absconding, accused no.4 was a Juvenile, hence, their case was separated and only four accused faced the trial. Original accused nos.1 to 3 including the appellant-original accused no.2 came to be convicted under Section 399 and original accused no.7 Asif Khan Mohd. Khan came to be acquitted.

2. Briefly stated the prosecution case is as under:

. Bhandup Police Station had an Anti-Gunda squad. P.S.I.Suryavanshi (P.W.7), P.W.1 Head Constable Deshmukh, P.W.2 Head Constable Kokate and P.W.3 Constable Nikhale were attached to the said squad. On 18th July, 1991 at about 11 p.m. the squad members were patrolling in their area. At that time, they received information that some robbers

have gathered in a room in Kamla Pandey Chawl, Dragsha Baug area, Bhandup. This information was passed on to P.W.7 P.S.I. Suryavanshi and others. Pursuant to the said information, police proceeded to Kamla Pandey Chawl. They reached there at about 3.45 a.m. In Room No. 29, they saw that light was on. The complainant Head Constable Deshmukh went near the room. He found that the door was locked. He heard some persons talking inside the room. Head Constable Deshmukh peeped in from the gap in the door and he found that inside the room, six persons armed with swords, choppers etc. were talking. He concentrated on their talks. From the talk, he was sure that the six persons inside the room, were planning to commit dacoity. Head Constable Deshmukh immediately contacted P.S.I. Suryavanshi and others and disclosed the facts to them. Thereafter, Head Constable Deshmukh went to backside door and he knocked on the door. The original accused no.1 Dilip opened the door. Whereupon, Head Constable Deshmukh immediately caught his hand and pushed him inside the room. Head Constable Deshmukh removed chopper from the hand of Dilip. Other policemen along with panchas rushed inside the room. Police caught all the persons who were inside the room.

Police Constable Badge No. 6308 caught the appellant and removed the sword from his hand. So also the other police personnel caught the other accused persons and disarmed them. Thus, all the accused persons came to be arrested and the weapons came to be seized. Thereafter, P.W.1 Head Constable Deshmukh filed his complaint which was recorded by P.W.6 P.S.I.Kawlekar. Head Constable Deshmukh also produced weapons found with the accused. Thereafter, the investigation commenced. During the course of investigation, original accused no.7 Asif Mohd. Khan came to be arrested. After completion of investigation, the charge-sheet came to be filed.

3. In due course, the case came to be committed to the Court of Sessions. Charge came to be framed against the appellant and other accused persons for the offence under Section 399 of IPC. At the time of framing of charge, two of the accused i.e. original accused no.5 Tapan alias Sanjay Chittaranjan Bose, and accused no.6 Mahadesh Vyankatraman Shetty were found to be absconding and original accused no.4 Naresh was found to be juvenile hence the case against them came to be separated and the charge came to be framed against

the original accused no.1, 2 (appellant) and accused nos.3 and 7. All the accused pleaded not guilty to the charge. Their defence is that of total denial.

4. During the course of the trial,in all prosecution examined seven witnesses. P.W.1 Head Constable Deshmukh is the complainant and he was the part of the raiding party. So also, P.W.2 Head Constable Kokate and P.W.3 Constable Nikhale were part of the raiding party. On the basis of their evidence, the learned Sessions Judge convicted the appellant under Section 399 of IPC and sentenced him as stated in para no.1 of this judgment.

5. I have heard Ms.Nilofar Saiyad, the learned advocate for the appellant and learned A.P.P. Shri.A.S.Shitole for the State. I have also carefully perused the evidence on record and judgment and order of the learned Sessions Judge. Looking to the evidence on record, in my view, the learned Sessions Judge has rightly convicted the appellant for the offence under Section 399 of IPC.

6. The prosecution case mainly rests on the evidence of P.W.1 i.e. Head Constable Deshmukh who

is the complainant in the present case and the evidence of P.W.2 Head Constable Kokate and P.W.3 constable Nikhale. All of them were part of the raiding party. I shall first deal with the evidence of the complainant P.W.1 Head Constable Deshmukh.

7. As the prosecution story in para no.2 of this judgment has been taken from the evidence of the complainant from his examination-in-chief, I do not intend to over burden this judgment by repeating the same here. I shall only broadly refer to his evidence here. Complainant was attached to Bhandup Police Station. While patrolling, they received information that some robbers are gathered in a Room in Kamla Pandey Chawl. He along with other police personnel went to the said room and peeped in through the gap of the door. He saw that 5 to 6 persons were talking inside. They were armed with weapons. On concentrating on what was being spoken in the room, Head Constable Deshmukh heard accused no.1 Dilip saying to the other persons that as to why Asif Khan Mohd. Khan had not come and it was getting late, they had to reach at Colaba. On the last occasion, Vaibhav managed to escape but this

time, they should not miss Vaibhav as they had huge amounts to gain. After hearing this conversation the police party kept a watch on the room but nobody came. Thereafter, they knocked on the door of the room. The door was partly opened by accused no.1 Dilip. Head Constable Deshmukh immediately caught Dilip and found chopper in his hands. Head Constable Deshmukh took out the chopper from the hands of Dilip. In the raiding party, there were two police officers and six policemen. All of them entered into the room along with panchas. Accused no.2 Govind (appellant), accused No.3 Vijay and accused no.4 Naresh were armed with swords. All of them were disarmed and they came to be arrested and the weapons came to be seized. Thereafter, Head Constable Deshmukh lodged the complaint against all the accused persons. Nothing has been elicited in the cross examination of this witness so as to discredit his testimony.

8. The evidence of P.W.1 Head Constable Deshmukh is supported by the evidence of P.W.2 Head Constable Kokate and P.W.3 Police Constable Nikhale who both were the part of the raiding party. Nothing has been brought out in the cross examination of both

the witnesses P.W.2 Kokate and P.W.3 Nikhale so as to disbelieve their evidence. On perusal of the evidence of these three witnesses, I find their evidence to be totally reliable and trustworthy and I have no hesitation in relying on the same. In this view of the matter, I am of the opinion that the learned Sessions Judge has rightly convicted the appellant for the offence under Section 399 of IPC.

9. The learned Sessions Judge has convicted the appellant for offence under Section 399 of IPC and sentenced him to R.I. for three years and to pay a fine of Rs.1,000/-. Ms.Nilofar Saiyad the learned advocate for the appellant has submitted that appellant was just 18 years old at the time of the incident. Out of the period of three years R.I. the appellant has been custody for about one year and nine months. She has submitted that though the appellant has been granted bail, thereafter, the appellant has maintained a clean record. The learned advocate for the appellant has prayed that looking to all these facts the sentence imposed on the appellant may be reduced to the period of imprisonment already undergone by him. From the material on record, it is clear that the appellant

was hardly 18 years of age at the time of the incident. Thereafter there is no adverse record against the appellant. The appellant has undergone 2/3rd of imprisonment imposed on him. Looking to all these facts, I am inclined to reduce the period of imprisonment imposed on the appellant to the period already undergone by him.

10. In view of the above, the appeal is partly allowed. The judgment and order of conviction against the appellant dated 13th March, 1995 for the offence under Section 399 of the IPC recorded by the learned Sessions Judge Greater Bombay in Sessions Case No. 936 of 1991 is confirmed. However, the sentence of R.I for three years is reduced to the period of imprisonment already undergone by the appellant. It is made clear that the fine amount is maintained. The appellant be released forthwith if not required in any other case.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.175 OF 1995

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Ms.Nilofar Saiyad i/b H.E.Mooman
Advocate for Appellant
Mr.A.S.Shitole, A.P.P. for State

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPTEMBER 13, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. In view of the above, the appeal is partly allowed. The judgment and order of conviction against the appellant dated 13th March, 1995 for the offence under Section 399 of the IPC recorded by the learned Sessions Judge Greater Bombay in Sessions Case No. 936 of 1991 is confirmed. However, the sentence of R.I for three years is reduced to the period of imprisonment already undergone by the appellant. It is made clear that the fine amount is maintained. The appellant be released forthwith if not required in any other case.

(V.K.TAHILRAMANI,J.)